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Chair

Mr. Lee Richardson

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• (1540)

[English]

The Chair (Mr. Lee Richardson (Calgary Centre, CPC)): We are coming to order now that we have the presence of the honourable Mr. Bains.

Before we proceed, I want to run over a bit of the agenda for today. I will discuss this later when we have concluded our examination of these witnesses, because I don't think it's going to take a long time today. We do have votes. At 5:15 the bell will ring.

My suggestion is that we go probably to 4:30 with the witnesses, and then we'll revert to committee business. I want to talk about this report on the free trade agreement between Canada and the states of the European Free Trade Association and just what the intent of the committee is—whether or not we want to continue to hear witnesses, how many more we want to hear, and whether or not we want to do a full report on it. I just want to get a sense from the committee.

We can do that, as I say, at perhaps 4:30, 4:35, if members have sufficiently examined the witnesses at that point.

So with that, I'm going to welcome our witnesses today. Thank you for coming, and in some cases on short notice. I do appreciate it.

We have Cyndee Todgham Cherniak, counsel for the international trade group of Lang Michener. Thank you for coming.

We have George Haynal, vice-president, government relations with Bombardier, who has been with us before. We're delighted to have you back. Thank you for coming.

Because of the short time for the appearance of the witnesses...we don't have full statements that they want to make beforehand, but I'm going to ask each of our witnesses today just to briefly give a little background—perhaps pick an area. I know the shipping law area is one you're particularly familiar with, Ms. Cherniak, and maybe you might have a few comments on that. Mr. Haynal, you could speak just broadly on your impression of this agreement as you know of it. Then we can proceed to questions.

If that's agreeable to everyone, I'll ask Ms. Cherniak to proceed.

Ms. Cyndee Todgham Cherniak (Counsel, International Trade Group, Lang Michener LLP): Thank you very much, Mr. Chairman and honourable members, for inviting me today.

First, I should let you know my background. I am a lawyer. I am a counsel at Lang Michener in their international trade group. I am also an adjunct professor at Case Western Reserve University School of Law in Cleveland, Ohio, and I teach a course on NAFTA, on

bilateral trading arrangements. I'm also a consultant to the Asian Development Bank, and in 2007 I reviewed 100 free trade agreements around the world for the Asian Development Bank, created a matrix on all those free trade agreements and the various provisions, and drafted an 800-page report that is currently in the process of being turned into an e-book.

So I read free trade agreements for fun.

In looking at the Canada-European Free Trade Association, which I call the CEFTA, I see it's just your basic trade-in-goods agreement. When I look at the agreement in the context of the shipbuilding industry in Canada, the one question I have that I think all of us want to answer is whether it meets the requirements of GATT 1994, article XXIV, paragraph 8(b). Is it a free trade agreement in the context of the GATT?

The provision of the GATT is that:

a free trade area shall be understood to mean a group of two or more customs territories in which the duties and or other restrictive regulations of commerce (except, certain ones where necessary...) are eliminated on substantially all the trade between the constituent territories.

So we need the elimination of all duties and all other restrictive regulations of commerce on substantially all trade. There's no definition in the GATT of what “substantially all” means.

Also, this provision doesn't give us a timeframe. We have a timeframe when we enter into an interim agreement to enter into either a free trade agreement or a customs union, and under an understanding on the interpretation of GATT article XXIV, that has to take place within 10 years. That's the limitation period, or it can be extended in exceptional circumstances, and the WTO member has to justify how this is exceptional. But we don't have that 10-year limitation period for a phase-out or elimination, reduction of duties, and other restrictive regulations of commerce.

What's generally understood is that “substantially all” means 90% of the trade, and there is a requirement under a transparency mechanism called the transparency mechanism for regional trade agreements that each country, after it enters into a free trade agreement, has to go over items line by line to demonstrate that the “substantially all” threshold has been satisfied.

I think Canada should be concerned for the shipbuilding industry that China and Korea will be watching to make sure we meet that threshold. I expect some of our hardest questions at the WTO, in the committee on regional trade agreements, would be with respect to the shipbuilding and justifying why it's taking 15 years in certain cases for the phase-out to occur, because that is abnormally long in the context of free trade agreements.

I looked at my 100 free trade agreements, and the longest one I've come across is the United States-Australia free trade agreement. There's an 18-year phase-out for duties on beef. That was considered to be exceptionally long, and it actually has created some tension in the trading relationship between the United States and Australia. That's the longest I can find in the books. I can't even find something of 15 years.

So I kind of look at it from an academic perspective. We've got developed country to developed country in the Canada-Australia free trade agreement. Canada-EFTA is developed to developed, and we're having the longest phase-out, as opposed to the developed country to developing country, which is where I would have expected to see these longer phase-outs occurring.

I also looked through the various EFTA free trade agreements, and when I look at the EFTA-Chile free trade agreement, I see it has immediate phase-out, four-year phase-out, or six year phase-out. It doesn't have anything as long as 15 and 10 years. It does have a provision that allows them to dismantle, which means they can go back and talk about the phase-outs. But to my knowledge, none of the phase-outs have been in excess of 10 years under the EFTA-Chile free trade agreement.

● (1545)

When I looked at the EFTA-Croatia free trade agreement, category A was two years, category B was five years, category C was four years, and table B included some of the ships in chapter 89. So the phase-out for ships under the EFTA-Croatia free trade agreement was either immediate or in five years.

For the EFTA-Egypt FTA, category A was one year, category B was six years, and ships fell within categories A and B.

For the EFTA-Israel FTA, all duties were removed immediately. It was the same with the Singapore-EFTA free trade agreement.

With Jordan, category A was four years, category B was seven years, and category C was a re-examination over four years for particular goods. But ships and yachts were in category A, and there were no ships or yachts in categories B or C. They were positive lists.

For the EFTA-Korea free trade agreement—and we know from the WTO case relating to China and Korea that both have shipbuilding industries—they had B1 at three years, B2 at five years, and category B3 at seven years. There were a few other vessels in B3 for the seven years, but on almost all the ships the duties were eliminated immediately.

Lebanon had a seven-year phase-out period. The table for ships had them either immediately free or they started at 15% or 5% and went down to zero within seven years.

In Mexico there was immediate duty relief for all ships and boats.

In Tunisia, category A was immediate duty relief, category B was in three years on 20%, 12%, 4%, and 0%, and ships fell within that category.

The last thing that's interesting in the Canada-EFTA free trade agreement is the safeguard mechanism. In article 25 there is a transition period for the shipbuilding industry at five to 15 years, depending on the goods, but there's an ability to use the safeguard mechanism if serious injury is shown. The duties can go back up to the MFN rate either when the case was brought or immediately before the agreement came into effect. That gives a three-year adjustment, so it's conceivable that we could go down close to zero if serious injury is felt by the shipbuilding industry. The duties can go back up to the original rate for a three-year period to allow the shipbuilding industry to adjust.

It looks as though the negotiators have done more than other negotiators in free trade agreements have for this particular industry, so from an academic perspective this is theoretically a good agreement in terms of this phase-out. The shipbuilding industry is the only one that has this phase-out period.

Rather than rambling on, I'll leave it up to you to ask any questions you may have. Hopefully this helps you factually.

● (1550)

The Chair: Mr. Bains.

Hon. Navdeep Bains (Mississauga—Brampton South, Lib.): I think we should continue with the practice of hearing from witnesses first and then members.

The Chair: All right. Thank you.

Mr. Haynal.

Mr. George Haynal (Vice-President, Government Relations, Bombardier Inc.): Thank you very much, Mr. Chairman.

My comments will be very brief and, in some respects, impressionistic. It's worth noting that the EFTA with which we're negotiating is a smaller group of countries than the one with which we started out negotiating. That may reflect how long it takes to negotiate agreements between parties that have sometimes contentious issues between them. I'm glad the negotiations have concluded, because although this is a smaller group of countries, it's a very important one, and it is a group of countries that have for one reason or another quite self-consciously decided to stay out of the European Union for their own reasons. I think that makes them also quite interesting from the point of view of Canada, which of course has a deep interest in a deeper relationship with the EU as a whole.

From the point of view of the company for which I work, which is Bombardier—I will not bore you with more background on the company than you already have—these are significant economic partners. We are established as quite important manufacturers in the rail sector in Norway and in Switzerland. We have aircraft flying in all of these countries except Liechtenstein; I assume they fly through Liechtenstein quite a bit. That presence includes Iceland, whose coast guard uses our aircraft for coastal patrol and surveillance.

So these are not unimportant economic partners, and from that point of view, too, I think we welcome this agreement, not so much because the tariff reductions that are implicit in this agreement are particularly important for our sectors—although they obviously have implications in other sectors—but because an agreement like this creates a level of confidence among investors even if the text itself is a classical tariff-oriented one.

The notion that there is such an agreement between Canada and the countries of EFTA establishes that there's a community of interest, even though it's not necessarily exactly congruent; that there is a level of confidence between the governments of these countries that allows us to work on issues when they do arise; and that investors, both Canadian in EFTA and EFTA investors in Canada, have the assurance of an intergovernmental agreement that governs the relationships and the economic sphere. Norway and Switzerland, of course, are important investors globally, including in sectors of some direct interest to the Canadian economy. So it is important from that point of view.

My last comment would be that this agreement is also to be welcomed from the point of view of the relationship with Europe more widely. We have managed to find common ground with advanced European economies in this case. That should be a help in the effort to find common ground with a much larger and much more heterogeneous European Union in the future. And to the degree that we can find common ground with that enormous trading and economic block, Canada will benefit, and I think Canadians will welcome it.

That would be the end of my introductory comments, Mr. Chairman.

Thank you.

• (1555)

The Chair: Thank you, Mr. Haynal.

I think we'll just begin the rounds in the normal way.

Mr. Bains, would you like to begin?

Hon. Navdeep Bains: Thank you very much, Chair. I appreciate that.

I would like to thank both the witnesses. It's nice to see some familiar faces back at committee.

I want to say, Cyndee, that your presentation is a bit technical, so I'm going to try to follow along. I know you mentioned a few areas. But my specific concern—and I mentioned this to departmental officials whom we met with on Monday as well—is with respect to sensitivities around shipbuilding. With this particular free trade agreement, CEFTA, there's been a lot of concern raised within the shipbuilding sector. The primary concern most of them have is with Norway and the fact that they have heavily subsidized their shipbuilding sector; up until 2005, until they declared that was no longer the case, that's allowed them to gain a competitive advantage.

In the department, they go through some of the areas where the subsidies were received. They try to downplay, in my opinion, the degree of the subsidies that were received in Norway. I think those subsidies did give the Norway shipbuilding industry a competitive advantage.

I know you alluded to, except for Australia and the United States, an 18-year phase-out of tariffs. I forget what sector that was, Cyndee.

Ms. Cyndee Todgham Cherniak: That would be beef.

Hon. Navdeep Bains: Except for that exception, this seems to be the longest phase-out period, and unprecedented, in any free trade agreement.

In your opinion, is this 15-year tariff reduction sufficient to offset the subsidies that the shipbuilding sector received in Norway, to level the playing field?

Ms. Cyndee Todgham Cherniak: Thank you for your question.

Since we have three years before the phase-out starts, there is the potential that the subsidies will diminish in their importance and effect within the next three years, so we're at the exact same level for the next three years that we are today or we were yesterday. That's a great plus, and that's unusual as well in free trade agreements. Normally the reductions start immediately, but we have things that remain the status quo for three years, and then we start into the phase-out.

Hon. Navdeep Bains: So effectively it's 18 years, then, if you take the three-year start. Is that a three-year start plus the 15 years, or is it three years?

Ms. Cyndee Todgham Cherniak: It's three years, and then there's a phase-out over the 12 years, which gets you to the 15-year time period.

Hon. Navdeep Bains: But it doesn't kick in until three years from now.

Ms. Cyndee Todgham Cherniak: Yes, it doesn't start in its equal reductions for three years. In addition to that, if the subsidies are having an effect and they're causing material injury to the domestic producers, there is a potential to bring a countervailing duty case against Norway. That's not precluded by the agreement. If the CBSA, Canada Border Services Agency, finds that there has been subsidization, and the Canadian International Trade Tribunal finds that there has been injury, then duties can be put in place to counteract the effect of the subsidization for a period of five years, and then it can be renewed for another five-year period. That's not prevented by the free trade agreement.

If we also find that there is illegal subsidization, we can always go to the WTO under the SCM agreement. That being said, we've been through Brazil aircraft, and when you suggest that one country has illegal subsidies, you might bring a claim against yourself as well. But that's always an open avenue in order to get the subsidies to stop if they are still going. Hopefully over this time period the effects of the subsidies back in time will have diminished.

Hon. Navdeep Bains: The second question is with regard to meeting Canada procurement policies. The understanding we have from the department officials in the way the agreement has been set up is that essentially any made-in-Canada procurement policies with regard to the purchase of certain ships is consistent with the free trade agreement, that it's not a violation of a free trade agreement. Is that your interpretation of the agreement?

• (1600)

Ms. Cyndee Todgham Cherniak: Yes. My understanding of the agreement is that the government procurement aspects of the agreement say they are going to follow the WTO agreement. Canada is a signatory to the WTO agreement on government procurement and so are the EFTA countries. It's a plural lateral agreement; not all WTO members have signed on. In the agreement on government procurement, we exclude certain goods, so we haven't altered our WTO obligations that have been in effect since the Uruguay Round with respect to public procurement.

Hon. Navdeep Bains: George, this is a question for you. You mentioned that we started off with a longer list and now we're dealing with a few select countries in this finalized CEFTA agreement and that this agreement could be used as a gateway for the European Union. I've heard that argument. Could you elaborate on what you mean by that?

How could this be considered a gateway? The European Union, in my opinion, has been fairly reluctant to deal with Canada because of the size of our market. They seem to be more preoccupied with Asia and America. How does this give us an added advantage? This is not part of the European Union. These are fringe countries, and this is a generation-one free trade agreement. It excludes service and investment, so it's really not a sophisticated free trade agreement in the current context that we are negotiating with other countries. How, in your opinion, does this act as a gateway into the European Union? I find that difficult to understand, and I'd like you to elaborate, please.

Mr. George Haynal: I'm not sure I used the term "gateway", and if I did, my intention was not to indicate that this is a first step towards a Canada-EU agreement.

What I was driving at was a notion that we are able, in this instance, to demonstrate that there is enough of a community of interest with advanced European countries to justify a free trade agreement, even though it is a first generation agreement. This gives us a comparative advantage vis-à-vis these markets in Europe that we did not have before, which should in itself be a stimulant, though a modest one, for the EU itself to regard this as a competitive advantage to us that we did not have in markets that are very close to the EU economies.

Hon. Navdeep Bains: Can you speak from Bombardier's perspective? If this free trade agreement is ratified by us, can you play out an example of how this would help your company?

Now that you have a free trade agreement with CEFTA, how did it help Bombardier, for example, with the European Union?

Mr. George Haynal: I would probably regard the comment I made as referring more to the general economy than to the company itself. We are established in these markets as we are in the markets of the European Union more generally. So for us, this is really potentially levelling a playing field if there's an agreement both with the EU and with EFTA. But that would be all I'd say.

Hon. Navdeep Bains: Thank you very much.

The Chair: Well done. Thank you, Mr. Bains.

We'll move along to Monsieur André.

[Translation]

Mr. Guy André (Berthier—Maskinongé, BQ): Thank you for being here with us today.

Mr. Chairman, I will be sharing my time with my colleague, Mr. Roy. My first question is for our witness from Bombardier. I was wondering whether you have evaluated the impact that this agreement could have on your sector in general, and the positive effect it could have on the development of your company specifically.

Ms. Todgham, we have studied the agreement between Canada and Korea in the course of our work as a committee. An impact study carried out by the automotive sector indicated that such an agreement would result in job losses. However, the government also carried out studies on the agreement, but reached different conclusions.

Do you know whether any impact studies have been carried out on the agreement with Europe, particularly with regard to shipbuilding? I raise shipbuilding as I think it is the main area of concern. Do you think that impact and market studies should be carried out to determine whether the shipbuilding industry, for example, will be threatened in the short-term?

A 15-year phase-out period has been planned to allow our industry to compete more effectively with these countries on the international market. However, would you not agree that establishing a phase-out period will be somewhat futile if the government does not use this time to further modernize Canadian industry?

• (1605)

Mr. George Haynal: My answer will be shorter than that of my colleague.

The benefits *per se* that Bombardier stands to gain are modest. However, as investors in two of the four countries involved in this agreement, we stand to gain a significant psychological boost. The agreement would give us, and other investors—be they Canadian or from EFTA countries—the option of calling upon our respective governments to resolve disputes. Nevertheless, this does not actually amount to much as we are already established in these economies and are domestic suppliers in the two most important countries for our sector, which is, of course, aviation and air carriers.

Mr. Guy André: Thank you very much.

[English]

Ms. Cyndee Todgham Cherniak: In answer to your question, I don't know of any shipbuilding studies so I can't really be helpful about the contents. I've not come across anything in my research that's publicly available on the industry. I am following the Korea free trade agreement closely. Wherever you have an overlap in industry between the two negotiating countries, you're going to have some friction, with one industry saying it's going to have some difficulties. This is a common occurrence. This is why many free trade agreements are negotiated between countries that have no overlap.

With the Korea agreement, there's a significant overlap and a much louder industry talking about the effects. I think it also is a factor right now that the U.S. has negotiated with Korea. So it really was North American industry coming forward and looking at these issues where you don't have the same thing, because the U.S. has not been negotiating with EFTA and Canada simultaneously.

That being said, even though I don't know of a market study, when I, as an academic, look at the agreement and the fact that it's a 10- or 15-year phase-out period, the fact that the anti-dumping mechanism is mentioned in the agreement and the fact that there is the transitional safeguard mechanism so that a country's specific safeguard can be brought under the CEFTA, someone must have been considering this particular industry in the negotiation.

Again, when I compare it to other free trade agreements, this agreement goes further than I've seen any other agreement go but for the U.S.-Australia agreement on beef. So I think someone does have a study somewhere. Whether it's within the Department of Foreign Affairs or whether it is in Industry, I don't know because I haven't seen it. But when I look at the provisions, I think they were carefully negotiated and longer concessions were drawn out of our EFTA partners in the agreement. As an academic looking at it, that's what I would conclude, not knowing the true background.

• (1610)

Mr. Guy André: Thank you.

The Chair: Mr. Roy.

[Translation]

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): Thank you, Mr. Chairman.

The Icelandic and Norwegian components of the free trade agreement, particularly the Norwegian one, are of some concern to me, even although Iceland is a very small country. Allow me to give you a few examples. Norway probably invests more in research and development than does any other industrialized country. I do not

know whether you have any data on the subject, but I know that Norway currently heavily subsidizes research and development and invests huge amounts of money in the sector. Indeed, its target for research and development is 5 to 6% of investments, whereas Canada's stands at around 2.2 to 2.3%. Furthermore, our sector receives little in the way of government subsidies. That is my first concern.

My second concern relates to Iceland. Iceland is, of course, a small country. I have been there and seen its ships for myself. Iceland's waters are protected primarily by Norway, as its own ships are too small and larger ones cannot be obtained. Let me give you an example. Iceland has an outstanding climate for manufacturing aluminum. Alcan has premises there. At the moment, Canada cannot compete with Iceland in terms of manufacturing aluminum. That is very clear and everyone here knows it. I do not understand why nobody thought about how this would affect Alcan or other aluminum manufacturing companies, such as Reynolds and Alcoa. Ms. Todgham, you told us that the protection afforded to the sector is second to none and that the only sector with a significantly longer phase-out period is shipbuilding. However, the Norwegians have already started to invest here in Canada, particularly in Quebec. As you know, the Norwegians bought the MIL Davie shipbuilding yard. They have substantial contracts here.

I would like you to tell me whether I understand the situation properly. My understanding is that only the shipbuilding yards have any real protection. You implied that there is no protection for other sectors. Then there is the issue of the forestry sector. Forestry management in Norway cannot be compared to what we do here in Canada. It has to be recognized that there are huge differences in the approaches adopted by the two countries, and that the Norwegians compete fiercely with Canada in the softwood lumber and finished forest products sectors. Those are the key elements of my question.

Would you like to comment, Mr. Haynal? I understand that the agreement might be in Bombardier's interests, as you are already established in Norway and are able to sell your products given that the Norwegians are perhaps a little less advanced in your sector than they are in others. However, that is no guarantee that in 5, 10 or 15 years' time they will not have surpassed you.

[English]

Ms. Cyndee Todgham Cherniak: In answer to your question, I look at article X of the Canada EFTA free trade agreement and it basically says that all duties are removed except as otherwise provided in annex E, and annex E is the shipbuilding annex. Then it says that "duties shall be prohibited" for all "products falling within Chapters 25 through 97 of the Harmonized Commodity Description and Coding System". So aluminum would fit in that category and I believe the forestry products fit within that category as well, "excluding the products listed in Annex F". So when I turn to annex F, neither of those products are listed there.

Then we have “products falling within Chapters 1 through 24 of the Harmonized System specified in Annex G”, so if forestry products—I don’t have the HS code with me and I don’t know forestry products off the top of my head—fell within that category, then they would be as set out in annex G. If a product is listed in annex G, then it will indicate whether or not it’s free. There’s a schedule for the EFTA countries and there’s a schedule for Canada as well.

I haven’t gone through it to look, but that’s where we would find whether or not there’s anything else. What has been said is that for all industrial goods, the tariffs are removed immediately for all goods going from Canada into the EFTA countries, and for EFTA country goods coming into Canada, for the most part, they are removed for industrial goods. There are only a few goods that are listed—certain dextrins and glues for animal feeding. It’s a really insignificant list that is common to the EFTA free trade agreements, but neither of those categories that you’ve mentioned is in that particular list.

I would conclude, without doing a detailed research through each of the annexes, that when it is a good coming from the EFTA countries into Canada, it would be duty free immediately upon entry into force of the agreement, and I haven’t heard those industries come forward.

• (1615)

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you, Mr. Chairman, and thank you to our witnesses for being here today.

My first question is for you, Mr. Haynal. If I understood you correctly, you said that the advantages of the agreement for Bombardier were primarily symbolic as there would only be a modest growth in sales. That means that you do not expect the agreement to generate job growth in Canada.

Mr. George Haynal: I do not have any exact figures, Mr. Julian, but given the size of the markets concerned, I do not foresee any major growth in the immediate future. It is part of our European strategy and will doubtlessly have a positive impact; I could not, however, be more specific at this time.

Mr. Peter Julian: The benefits will primarily be symbolic. The agreement will not drive up employment.

Mr. George Haynal: Symbolic benefits are always important in this domain. As an investor in the two regions—Canada and the EFTA countries—I believe that the agreement will offer a psychological boost. I have to say, however, that I was not invited here as an expert on the agreement. I was under the impression that I was invited here as a representative of the manufacturing sector.

Mr. Peter Julian: Of course.

Mr. George Haynal: From the point of view of the manufacturing sector, I expect it will have a positive impact, but it is not a key element of our industrial strategies for the future.

Mr. Peter Julian: Thank you very much.

[*English*]

Ms. Cherniak, I’m very interested in the studies you’ve done around free trade agreements. Have you analyzed in any way the difference between the promise around free trade agreements and the kinds of results they’ve actually delivered for working families?

Ms. Cyndee Todgham Cherniak: I haven’t done that research, but the OECD has an excellent paper that came out in the last five years on the service sector. It deals with the exponential benefit that comes from the liberalization of the service sector. They gave certain examples.

The key for the service sector is that sometimes you’re able to create a hub within one jurisdiction and then branch into others.

If you went into Norway or Iceland, you might be able to take advantage of the relationship between Norway and Iceland with the EU countries or with the Euro-Mediterranean partnership. The EFTA countries are also entering into free trade agreements with Tunisia, Egypt, Jordan, and a number of the North African and Middle Eastern countries. You might be able to hop, step, and branch out from that jurisdiction. From a service perspective, it can be exponentially beneficial to enter into such a free trade agreement. You see those sorts of studies.

You also see some discussion on technical barriers to trade as well as sanitary and phytosanitary measures that could be pursued when there is agreement between two countries on standards to be adopted. These are ways of increasing trade.

Through free trade agreements, you have a better understanding of each other, a better understanding of the government processes and the standards processes that each country goes through. And with greater understanding of each other, more trade can occur because you’ve reduced the barriers to trade. There are some studies in those areas.

Mr. Peter Julian: This might be something you’d want to undertake, because this is part of the debate, not so much here but with the public across the country. You mentioned NAFTA in your introduction. The two leading candidates for the Democratic nomination have called for a renegotiation of NAFTA. The PRD, which arguably won the last Mexican election, has called for renegotiation. In Canada, we’ve seen two-thirds of Canadian families actually earning less in real terms since 1989.

The free trade era certainly looked good in textbooks, but in the practical application on the bottom line, it’s been a real failure for working people.

I appreciate the attention you’ve brought to analyzing the free trade agreements in isolation. I suggest that it would be a real public service if you could move from viewing this in isolation to what actually happens on the ground.

I’d like to come back to this agreement and its possible impacts on jobs. You have read the agricultural protection elements of the agreement. What is your thinking around supply management? According to your analysis, what might the impact be for family farms across the country?

•(1620)

Ms. Cyndee Todgham Cherniak: I have a legal rather than an economics background, so it's outside my skill-set to talk about economic effects. From an academic perspective, I recognize that the agricultural provisions of the agreement seem to leave our agricultural policies in place. This is in article 3.2: "The Parties declare their readiness to foster, in so far as their agricultural policies allow, harmonious development of trade in agricultural products." It's kind of a fluff statement, but I think the statement would allow us to continue with whatever agricultural policies we have. There will not be a case like the one brought under NAFTA by the U.S., saying that our agricultural policies needed to be changed.

I think we've covered that off, so this agreement should not have an impact. They might yet bring a case against us, but if I was acting for the Government of Canada, I'd rely on this statement and tell the panel that we didn't have to change our agricultural policies as a result of this agreement. That's what I'd argue.

Mr. Peter Julian: In Norway and Switzerland they've been very good at protecting their family farms. They support their agricultural sectors, of course, much more firmly than we do here in Canada. Do you think that what Switzerland and Norway have managed to negotiate is a substantial protection for their existing agricultural sector?

Ms. Cyndee Todgham Cherniak: There's nothing I've read suggesting they're any more protected than Canada. I think the provision is reciprocal. So there's equal protection on both sides—as I read the agreement from an academic perspective—because both of the parties declare that insofar as their agricultural policies are concerned.... It's kind of making them off limits.

I don't see the EFTA countries getting a concession out of us. If you point me to something, I'll read it, but that's not what I have concluded from what I've read.

Mr. Peter Julian: I think that's fair—though, of course, their sectors are much more firmly supported than ours are. So in a sense, it's reciprocal, but at different levels. It's an unbalanced playing field, in the sense that Canada's agricultural sector has already been really hard hit by the last 20 years.

I'd like to move on to shipbuilding. You did raise concerns about the length of time for the tariff transition or elimination. The Norwegian shipbuilding industry is much larger than Canada's, and it has been supported by public funds. Its value in 2007, the last year we have information for, was \$17.4 billion in total production. They employ 38,000 workers. Canada's shipbuilding industry is much smaller. In the last figures we have, it was \$525 million in production in 2005. It employed 3,500 workers. Their sector in terms of production is 34 times bigger.

How do we make sure that our shipbuilding industry, a vital strategic industry, continues if we're eliminating the tariffs and we have a Norwegian industry that is supported by good public investments and is monstrosly larger than our own shipbuilding sector?

Ms. Cyndee Todgham Cherniak: We protect ourselves under the WTO agreement. If this industry continues to be subsidized, we have mechanisms at our disposal to take Norway to task for that. Whether or not we choose to do so will be a political decision. I come back to

the Brazilian aircraft cases at the WTO, which didn't go so well. But we have this mechanism at our disposal. So there are these sorts of protections that already exist, plus there is the safeguard mechanism, that if the reductions occur too fast and our industry suffers serious injury.... You know what? It may be that there's no overlap between the industries, or it costs so much to get ships to Canada, or there aren't Canadian buyers.... So we have a lot of factors that will come into play, but if it turns out that there are significant sales to Canada and imports into Canada, then we have mechanisms to redress any serious injury that's caused by that activity under the Canada-EFTA free trade agreement.

There's also the SCM agreement at the WTO, which extends beyond that. If we went to the WTO, we would have to bring the case against all shipbuilding industries in every country. Under this agreement, we're able to do it in a country-specific way. So it would be Canada versus Norway, but at the WTO it's Canada versus everybody.

So there are mechanisms where subsidization creates a competitive advantage, allowing goods to be sold in the international market at a lower price. If the Canada Border Services Agency finds there's been subsidization, they will calculate what the value of it is to the particular exporter of the product that is being subsidized. If the companies participate in the case, there are then company-by-company duty rates, or CVD rates. We all know about this through our softwood lumber experience; it's the same sort of thing. Or if none of the companies participate in the process, it would be some specified rate—and this could go on for a significant period of years.

•(1625)

Mr. Peter Julian: Yes, and that's my point. We've seen with softwood lumber that—

The Chair: I think we're going to have to move on. You're pushing it.

Mr. Peter Julian: I used the magic word.

The Chair: Thank you for that answer.

Could you just explain SCM?

Ms. Cyndee Todgham Cherniak: SCM agreement means subsidies and countervailing measures.

The Chair: Great. Thank you.

Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you, Mr. Chairman.

Thanks to Ms. Cherniak and Mr. Haynal for coming here today. I've enjoyed some of the questions and answers. Some of my questions have been partially answered, but I'd like to go a little further on some of them.

Ms. Cherniak, you mentioned in general terms the job the negotiators had done. Basically, we've heard—not necessarily in this room—from a couple of misinformed people, and from Mr. Julian, though I won't name him as one of them, that the negotiators basically did not do a good job. You threw that tub of dirty water right out the window. I'm glad to hear you do that. For the most part, our negotiators do a good job. You confirmed that, which is great to hear.

Something I would like you to talk a little bit about is phase-out periods. I call them “phase-outs”, which I hope is the proper term. You said they were much longer than they were in any other agreement with any other country, basically, or what have you—and we learned a bit about that the other day. But you mentioned something else, and I just want to be clear about it, that if something isn't going right in a certain industry or sector, there could be a moratorium or a three-year freeze, or something.

Did I hear that right? Maybe you could elaborate a little on it.

Ms. Cyndee Todgham Cherniak: Yes, Mr. Miller, what you're asking about is a country-specific safeguard mechanism. When we entered into the GATT, there was a safeguard mechanism under the safeguard agreement. Because we have agreed to tariff concessions in the agreement, and the tariffs are going down, and because the negotiators can't think of everybody and every industry when they're at the WTO, and can't take into account every unique circumstance, if it turns out there is an industry that suffers serious injury as a result of the tariff reductions that take place in the phase-out schedule, they can bring forward a case. It can be initiated either by the Department of Finance without the industry or the industry can bring a complaint to the Canadian International Trade Tribunal for a safeguard proceeding to take place.

So under the Canada–EFTA free trade agreement, if a particular industry is suffering serious injury as a result of the tariff reductions under that agreement.... If the shipbuilding industry finds it can't adjust quickly enough, what they're able to do is bring forward this safeguard measure. And if the Canadian International Trade Tribunal finds there has been serious injury and there's been a surge as a result of the tariff reductions, then they're able to put a special surtax in place.

Under the agreement, it's limited to a three-year period, and the duties can go back up to the rate they were, either immediately before the agreement came into place.... Let's just say we get through the Doha Round and cut our 25% MFN rates down to 15%; then the rate would be increased and the duty rate would go up to 15%, because that's where it would have been in any event.

So we have a mechanism to have this three-year period, where the duties go back up to the higher level, and the industry is given an opportunity to adjust to the fact that the reductions are taking place; they're going to need to modernize and somehow become more competitive as a result.

• (1630)

Mr. Larry Miller: Just on that, my understanding of this phase-out is that it's done over 15 years, and in the first three years basically nothing happens. Then the entire 15 years are prorated, I suppose, each year, and it's done over 12 years.

So could the three-year example you're talking about happen at any time in those 12 years of phase-in, or could it also happen at some point outside or after those 15 years?

Ms. Cyndee Todgham Cherniak: In answer to your question, under the Canada–EFTA free trade agreement, there is a deadline, so you can't bring a case forward after that phase-out period has expired. So once the 15 years are up.... Now the agreement says that for everything other than shipbuilding, it's a seven-year limitation period, and after seven years you can't have it country-specific. But for the goods that are in annex E, the shipbuilding annex, that requirement goes to the expiry of that particular annex. If you think back to the WTO and clothing and textiles, as soon as the safeguard phase-out period was about to expire, we had a series of cases that came to the fore.

So let's just say we're in year 14, part way through, and the industry is suffering its injury at that point in time. They would be able to bring the case forward and bring the duties all the way back up to the MFN rate for a three-year period. So it can extend beyond the 15-year period.

Mr. Larry Miller: Okay. That's good. I thought it would be too good to be true, to go beyond the 15%, but it still sounds like a great measure in there to protect Canadian business.

Mr. Haynal, you mentioned a number of things for your business. You welcomed the agreement, for starters. You mentioned something about finding common ground with some of the...I think you used the word “higher-end” European markets. Maybe you could elaborate on exactly what you meant by that. Did you just mean when it comes to aeronautical or in other industries as well, or everything in general?

Mr. George Haynal: I meant that really as a general comment to indicate that there is a sufficient commonality of view to allow us to reach a broad agreement, even though the agreement itself is reasonably narrow in scope.

Mr. Larry Miller: Okay.

Also, Mr. Bains did touch on this, but I wrote it down. You said this could open the door to further trade, and I was a little confused by the answer you gave to Mr. Bains. Maybe it was just my hearing.

You indicated you weren't really sure it would get us more into what we call the EU countries, but on the other side of it.... It just seemed a little contradictory, so maybe you could talk about that a little more. Could this agreement open up some other doors for your industry or any other ones possibly into some EU countries?

• (1635)

Mr. George Haynal: Let me go back over a couple of points I made. The EFTA group, with which we are negotiating now, is a smaller group of countries—

Mr. Larry Miller: Yes, I realize that.

Mr. George Haynal: —than EFTA had in the beginning. A number of EFTA members have joined the EU since we started negotiating with them. That was my fundamental point.

These countries have their own reasons for not joining the EU, but none of those reasons precludes an agreement with us, at least on these narrower tariff barrier issues that sometimes pose difficulties in some sectors.

In our sectors, the tariffs are not an issue. There are other issues that you approach through other means. For instance, we're established as manufacturers, as I mentioned, in Norway and Switzerland, and that is because it helps us to be present in order to be able to sell in that market, not necessarily because of tariff reasons, but because of the way the market is organized.

From a narrow, Bombardier point of view, I would say that this agreement is positive in that it allows a higher level of certainty that if there are issues that concern us as investors, there will be an intergovernmental agreement to which we can appeal and a custom of dealing with these issues between governments that is now in place. So that is a help.

Insofar as this is an agreement that perhaps contributes to progress on an agreement with the EU, I meant to indicate two advantages. One is that it indicates to the members of the EU that Canada is now competing with them in these EFTA countries on a more level playing field, if you like. We are in a free trade relationship with these countries that are physically part of Europe. This is a stimulant to them to regard us as a more serious trading partner than they might have otherwise. The fact that we have a free trade agreement with the United States should also be a stimulant in that respect, but let's leave that aside for the moment.

The second advantage I would think this has in terms of facilitating the process—and I'm not talking about opening doors or breakthroughs or anything dramatic of that kind—is the simple demonstration that it's possible for European countries with highly developed economies to reach a free trade agreement with Canada. This is simply an example, and examples are very helpful to governments when they try to make decisions.

Those were really the two main points I tried to indicate. I hope that was clearer than my first answer.

Mr. Larry Miller: Sure.

I know it takes time to build markets and what have you. But with this agreement, what are the potentials for your company, for example, for Bombardier or for the aeronautical industry in general in Canada? Do you have a rough figure there? Has your company been doing any projections as to what it might mean 10 years down the road?

Mr. George Haynal: I do have to put these markets into perspective, Mr. Miller, and I think I tried to answer in that spirit earlier, when Mr. Julian was asking me about this.

These are not very large markets—not for what we make. They're not by any means insignificant, but they're not the enormous markets that some others are. Nonetheless, they are definitely important to us. We are manufacturers in Norway of railway equipment, and we produce and export from Norway. We are manufacturers in

Switzerland. In fact we are the most important manufacturer, period, of rail equipment in Switzerland.

So we count on these markets as important partners for us. Having an agreement that in a sense recognizes the special place of Canada and Canadian enterprise in their economies will be a help as these markets develop. It will help in terms of their domestic demand and as platforms for exports further on, exports to which our Canadian operations would obviously also contribute, and exporters, which would then contribute also to our Canadian operations. They have specialized skills that they bring to it.

In terms of aerospace, we have been successful in these markets. Most recently, I should note, we made a very significant sale of turboprop aircraft to a Norwegian regional company, a subsidiary of SAS. You may have heard about this.

That's interesting for two reasons—one, because we made this sale despite some earlier difficulties with that company; and two, because we've actually had a 50-year relationship, unbroken, with this particular carrier. For 50 years they've been buying de Havilland and Bombardier products.

So I would expect that an agreement like this will simply make that kind of relationship tighter, closer, and more productive.

• (1640)

Mr. Larry Miller: Very good.

Ms. Cherniak, you were talking about agricultural products and what have you. You mentioned in there that this agreement could create more competitiveness. And you know, competitiveness is always a good thing, but maybe you could elaborate a little bit on exactly what you meant by that. Maybe you could give me some examples of where and what you were referring to when you said that.

I believe it might have been in a comment to Mr. Julian.

Ms. Cyndee Todgham Cherniak: I'm not sure if it wasn't in the context of the safeguard mechanism, that you're able to adjust and become more competitive during that adjustment period.

I don't know of anything in this particular agreement that says the agricultural sector is going to be more competitive as a result of this agreement, so I maybe misspoke. The agreement doesn't affect our agricultural policies. To the extent that our agricultural policies positively impact the competitiveness of the Canadian agricultural sector, this particular agreement isn't going to negatively impact on that due to the fact that our agricultural policies get to stay in place.

Mr. Larry Miller: Yes, okay, you're more on the policy side of it. But in your opinion—if you do have an opinion on it—do you feel this is a good agreement for Canadian agriculture?

Ms. Cyndee Todgham Cherniak: From what I've read in the past, I don't see agriculture playing a big part in the free trade agreements due to the cost to transport goods from a distance. When you have the Canada-U.S. Free Trade Agreement or NAFTA, we're neighbours, so it's easy to ship back and forth across the border. When you have to put goods on a boat or a plane and send them over halfway around the world, with the cost of transportation and fuel nowadays, it's not as competitive as it used to be.

So where there is overlap in agricultural sectors, I don't see there being a lot of trade—but I certainly hope we get more Swiss chocolate into Canada as a result.

Mr. Larry Miller: I understand we might. Thanks.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Miller.

John, could you be really brief?

Mr. John Maloney (Welland, Lib.): I will be very brief.

Ms. Cherniak, the shipbuilding sector was a real concern. Certainly the three-year holiday and the reduction of tariffs over seven to twelve years alleviated some of the concerns for the shipbuilders.

Is there anything else they should be wary of, in your opinion? Or is there anything in the agreement, perhaps, that we should be wary of?

Ms. Cyndee Todgham Cherniak: To be honest with you, I don't see anything else in the agreement. In trade in goods agreements, you usually don't have much that's of concern besides the lowering of the tariffs. Canada is following the SPS agreement, not that it affects ships. It affects agriculture more. It's following the technical barriers to trade agreement. Maybe if we had a TBT-plus agreement, but I can't....

There's nothing in there that concerns me. We're following our WTO obligations. To be honest, there's nothing that jumps off the page besides the phase-out schedule. From an academic perspective, it's a good phase-out schedule for an industry that is concerned.

Mr. John Maloney: Intellectual property services and financial sectors were left out. Is this a flaw? Is this something we should consider for another time, in your opinion?

• (1645)

Ms. Cyndee Todgham Cherniak: That's a really good question.

There are always two ways of looking at it. I will give you my opinion. Strategically, it was a good move to leave them out. As a practitioner, I normally like to have everything neatly in one agreement so that I don't have to go looking for the various pieces and parts.

We are currently in a WTO negotiation. The Doha Round is still alive—maybe it's not so well, but it's still alive. Rather than putting

all the services on the table right now, it was a good move strategically to keep that back, in my opinion. They said they will negotiate it over the next two or three years. I think that is the provision. When you go the GATT, which is the General Agreement on Tariffs and Trade, and GATT article V, that's what you have to do when you enter into a services free trade agreement.

There are other countries that have divided up goods and services. What we've done isn't unique. There are many agreements. The EU-Mexico agreement is a perfect example of where it's been done in the past.

What we have to do, under GATT article V, is liberalize in substantially all sectors. Under the WTO, we've divided services between 150 and 160 sectors. So substantially all, whatever that means—90% or more—need to be liberalized. And then within those sectors we need to, again, liberalize substantially all the services within the subsector.

Rather than putting it all on the table right now, while we're in the middle of a negotiation, holding it back and saying that within the next three years we'll know what's happening at the WTO on the services negotiation.... It's a very unique time. Normally, I probably wouldn't be saying this as an academic and as a practitioner. I normally would be saying that I wish it was all one nice, neat little package. But given the unique circumstances, it's not an unwise move to have this delayed.

Mr. John Maloney: Very good. Thank you.

Thank you for the courtesy, Mr. Chair.

The Chair: I appreciate that. I think it was helpful to the committee to get that. We have a series of these that we're going to talk about, and that answer will be helpful in the discussion of a number of them. So thank you for that.

With that, we're going to conclude the examination of the witnesses. I do appreciate your coming. That was very helpful.

Again, Mr. Haynal, thank you for coming back and offering your advice. Ms. Cherniak, thank you for taking the time today to join us. I appreciate your coming. Thank you again.

I'm now going to ask the committee if we might move in camera to discuss future business.

Some hon. members: Agreed.

The Chair: All right. I have the unanimous consent of the committee to go in camera. Fine.

While we are shifting to that mode, I'm going to have the clerks hand out some material with regard to future business.

We're going to take five minutes off.

[Proceedings continue in camera]

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